

## **REMARKS**

Claims 1-29 remain pending in this application. Claims 1, 10, 14, 17, 21, 28 and 29 are independent. No claims have been amended, added or canceled by this Response.

Although the Examiner has indicated the allowability of various claims in this application, Applicant respectfully traverses the present rejections because at least the independent claims are believed to be patentable over the applied art, as discussed further below.

### **Correction and Perfection of the Claim for Priority under 35 U.S.C. § 119**

This application is a National Stage Application under 35 U.S.C. § 371. Applicant has perfected his claim for priority to Finnish application FI 982855, filed on December 31, 1998 by filing the accompanying verified English translation of the priority document.

An Application Data Sheet is also being filed to correct an obvious typographical error in the priority document serial number. Support for this change may be found on the face of parent International Application PCT/FI99/01083 filed on December 28, 1999.

### **Anticipation Rejection by Lager**

Withdrawal of the rejection of claims 17 and 25 under 35 U.S.C. §102(e) as allegedly being anticipated by Lager et al. (US 6,636,502) ("Lager") is requested.

Applicants note that anticipation requires the disclosure, in a prior art reference, of each and every limitation as set forth in the claims.<sup>1</sup> There must be no difference between the claimed invention and reference disclosure for an anticipation rejection under 35 U.S.C. §102.<sup>2</sup> To properly anticipate a claim, the reference must teach every element of the claim.<sup>3</sup> "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference".<sup>4</sup> "The identical invention must be shown in as complete detail as is contained in the ...claim."<sup>5</sup> In determining anticipation, no claim

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<sup>1</sup> *Titanium Metals Corp. v. Banner*, 227 USPQ 773 (Fed. Cir. 1985).

<sup>2</sup> *Scripps Clinic and Research Foundation v. Genentech, Inc.*, 18 USPQ2d 1001 (Fed. Cir. 1991).

<sup>3</sup> See MPEP § 2131.

<sup>4</sup> *Verdegaal Bros. v. Union Oil Co. of Calif.*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

<sup>5</sup> *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

limitation may be ignored.<sup>6</sup> In view of the foregoing authority, the cited reference at least fails to anticipate independent claims 17 and 25.

### ***Specific Deficiencies of Lager***

As regards claims 17 and 25, Lager fails to disclose that a support node receives, from a first gateway node, a message including an address of a second Gateway Support Node, and any feature relating thereto, including a second Gateway Support Node.

Specifically, Lager fails to disclose, *inter alia*, "a support node arranged, ***in response to an address of a second gateway support node included in a message received from the first gateway support node***, to activate establishment of a tunnel to be used for transmitting packets with said second gateway support node", as recited in previously-presented independent claim 17 (*emphasis* added).

Furthermore, Lager does not disclose a support node comprising a processor configured, *inter alia*, "***in response to an address of a second gateway support node included in a message received from a first gateway node, to activate establishment of a tunnel to be used for transmitting packets with said second gateway support node***", as recited in previously-presented independent claim 25 (*emphasis* added).

According to the Abstract, Lager is purportedly directed to GPRS-subscriber selection of multiple internet service providers in which a switching device (PLMN-SW) in a mobile radio communication system (PLMN) which supports a GPRS-network allows connection of a terminal station (GPRS-MS) of the mobile radio communication network (PLMN) with one of a plurality of packet data communication networks (PDN1, PDN2, IN). The selection of the packet data communication network (PDN1, PDN2, IN) is based on the transmission of a specific network indication parameter (NIP) from the terminal station (GPRS-MS) of the mobile radio communication network (PLMN). The network indication parameter (NIP) is transmitted to a serving (GPRS) support node (SGSN) as a special parameter in a PDP context activation procedure. Thus, a large number of internet service providers (ISP1, ISP2, ISP3) can be connected to a GPRS-network.

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<sup>6</sup> *Pac-Tex, Inc. v. Amerace Corp.*, 14 USPQ2d 187 (Fed. Cir. 1990).

Lager teaches that the SGSN selects one Gateway Support Node for which it has an address, and the tunnel is established and maintained with the selected Gateway Support Node. (See Lager at least at col. 13:67 through col. 14:1; col. 17:40-49; col. 6:30-34; and col. 7:16-18). Lager also teaches that a message sent by a Gateway Support Node to Serving Support Nodes *never* contains an address of another Gateway Support Node. (See Lager at least at col. 7:23-24; col. 18:5-8).

With further regard to claim 17 and 25, Lager at col. 4:7-18 recite that a tunnel is established between a Gateway GPRS Support Node (GGSN) and a respective Serving GPRS Support Node (SGSN). As is evident from the teachings of Lager, an SGSN *cannot* be read as a GGSN, and therefore the reference fails to disclose a second GGSN, contrary to the Examiner's contentions.

Based on the above, Lager clearly fails to disclose, teach or suggest a feature that is recited in various ways in each of the pending independent claims, *i.e.*, that a Gateway Node sends a message indicating an address of another Gateway Support Node, as more specifically discussed above with respect to the claim language.

Accordingly, since the applied art does not teach or suggest all the claimed limitations, reconsideration and allowance of independent claims 17 and 25 are respectfully requested. In addition, dependent claims 18-19 and 26-27 variously and ultimately depend from these patentable independent claims, and are submitted as being allowable at least on that basis, without further recourse to the patentable features recited therein.

### **Unpatentability Rejection Over Lager and Kelly**

Withdrawal of the rejection of claims 1, 14, 20-21, 24, and 28-29 under 35 U.S.C. §103(a) as allegedly being unpatentable over Lager in view of Kelly (US2001/0055299) is requested. The deficiencies of Lager have been discussed above.

At the outset, Applicant notes that, to establish a *prima facie* case of obviousness, three basic criteria offer useful insights. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a

reasonable expectation of success. Finally, the prior art reference must teach or suggest all the claim limitations.<sup>7</sup> Further, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure.<sup>8</sup> The Supreme Court recently held that it is necessary, *inter alia*, for a court to look to interrelated teachings of multiple patents in order to determine whether there was an apparent reason to combine the known elements in the claimed. In this regard, the Court held "[t]o facilitate review, this analysis should be made explicit."<sup>9</sup> "[R]jections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."<sup>10</sup> The Examiner has failed to establish a *prima facie* case of obviousness.

### ***Specific Deficiencies of Lager Combined with Kelly***

Examiner refers to Lager's Abstract and to col. 1:8-15 which discloses that a user terminal sends a network indication parameter which indicates which one of the several networks, reachable via one Gateway Support Node, is to be selected. Applicant submits that this portion of Lager clearly fails to disclose, teach, or suggest "a condition for a first gateway packet support node" and "so that when this condition is fulfilled, a second Gateway Support Node is more suitable for transmitting packets over a connection, the second Gateway Support Node being an alternative to the first gateway support node".

The Examiner admits that Lager is deficient with respect to providing a teaching or suggestion of detecting, by the first gateway node, that the condition is fulfilled, and instructing, by the first gateway node, to select the second gateway support node by sending a first message indicating the second gateway node. The Examiner asserts that Kelly makes up for this admitted deficiency of Lager.

Kelly discloses a packet data network as a TCP/IP network, or other non-GPRS network. Thus, a combination of Lager with Kelly would require that the teachings of Kelly would be implemented in the packet data network (PDN) of Lager, connected to GPRS network via a GGSN. Further, since Kelly clearly teaches that a Gateway is selected on the basis of a

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<sup>7</sup> See MPEP §2143.

<sup>8</sup> *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) and See MPEP §2143.

<sup>9</sup> *KSR Int'l. Co. v. Teleflex Inc.*, 550 U.S. \_\_\_\_ (2007) (see p. 14).

telephone number identifying a subscriber apparatus to which a connection is to be established, Kelly also fails to disclose, teach, or suggest the claimed condition *i.e.* "the condition not relating to a receiver of a packet."

The Examiner refers to Kelly at paragraph [0066], however this portion of Kelly merely teaches that a gateway establishes a connection to another gateway. ***It is clearly evident that both gateways are required to establish connections; they are not alternatives for each other.*** Further, ***according to Kelly, the Gateway selection is based on the address of the receiver,*** and not on an address of another Gateway Support Node.

Thus, a combination of Lager and Kelly teach routing a connection establishment according to the receiver's address or, if the connection establisher, *i.e.*, a user (user terminal) initiating the connection establishment, can select a network, the connection is routed via the user selected network. However, that clearly is not what is claimed by Applicant.

Specifically, neither Lager nor Kelly, alone or in combination, disclose, teach, or suggest a method that includes, *inter alia*, "defining at least one condition for a first gateway support node, so that ***when the condition is fulfilled, a second gateway support node is more suitable for transmitting packets over a connection, the second gateway support node being an alternative to the first gateway support node so that the packets are transmitted from a subscriber either via the first gateway support node or via the second gateway support node, the condition not relating to a receiver of a packet...*** instructing, by the first gateway node, ***to select the second gateway support node by sending a first message indicating the second gateway support node***", as recited in previously-presented independent claim 1 (*emphasis added*).

Further, the applied art does not disclose, *inter alia*, "a gateway support node of a packet network arranged to transmit, ***in response to fulfilment of a predefined condition, a first message indicating another gateway support node which is more suitable for transmitting packets, the predefined condition not relating to a receiver of a packet, wherein the gateway support node is configured not to transmits received packets to the other gateway support node***

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<sup>10</sup> See *Id.*, citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

***but to transmit the received packets towards their destination address"***, as recited in previously-presented independent claim 14 (***emphasis*** added).

Still further, the applied art does not disclose a gateway support node of a packet network that includes, *inter alia*, "a processor configured to transmit, ***in response to fulfillment of a predefined condition, a first message indicating another gateway support node which is more suitable for transmitting packets, the predefined condition not relating to a receiver of a packet, wherein the gateway support node is configured not to transmits received packets to the other gateway support node but to transmit the received packets towards their destination address"***, as recited in previously-presented independent claim 21 (***emphasis*** added).

In addition, the applied art does not disclose a processor configured to, *inter alia*, "detect, that a condition is fulfilled, ***the condition being defined for a first gateway support node and not relating to a receiver of a packet, so that when the condition is fulfilled, a second gateway support node is more suitable for transmitting packets than the first gateway node selected for transmitting packets, and to instruct, in response to the condition being fulfilled, to select, instead of the first gateway node, the second gateway support node by sending a first message indicating the second gateway support node"***, as recited in previously-presented independent claim 28 (***emphasis*** added).

Finally, the applied art does not disclose a computer-readable medium having stored thereon a software routine that includes, *inter alia*, instructions for "detecting that a condition is fulfilled, the condition being defined with respect to a first gateway support node and not relating to a receiver of a packet, ***so that when the condition is fulfilled, a second gateway support node is determined to be more suitable for transmitting packets than the first gateway node selected for transmitting packets, and instructing to select, instead of the first gateway node, the second gateway support node by sending a first message indicating the second gateway support node"***, as recited in previously-presented independent claim 29 (***emphasis*** added).

Accordingly, since the applied art does not teach or suggest all the claimed limitations, reconsideration and allowance of independent claims 1, 14, 21, and 28-29 are respectfully requested. In addition, dependent claims 2-9, 15-16, 20, and 22-24 variously and ultimately

depend from allowable independent claims 1, 14, and 21, and are submitted as being allowable at least on that basis, without further recourse to the patentable features recited therein.

**Unpatentability Rejection over Lager in View of Cheng et al.**

Withdrawal of the rejection of claims 18-19 and 26-27 under 35 U.S.C. §103(a) as allegedly being unpatentable over Lager in view of Cheng et al. (US 6,738,909) ("Cheng") is requested.

Without any admission of the propriety of the Examiner's contentions regarding Cheng, and without prejudice or disclaimer, Cheng has been removed as available prior art against the claims of the present application. Applicant has concurrently perfected his claim of priority under 35 U.S.C. § 119 to Finnish application FI 982855, filed on December 31, 1998, a date that is before Cheng's effective U.S. filing date of September 2, 1999.

Accordingly, withdrawal of Cheng as a reference and allowance of claims 18-19 and 26-27 are respectfully requested.

**Allowable Subject Matter**

Applicants note with appreciation the indication that claims 10-13 are allowed and that claims 2-9, 15-16, and 22-23 are drawn to allowable subject matter, and would be allowed if rewritten in independent form.

However, in light of the distinguishing arguments presented above at least with respect to the independent claims, further amendment of the claims is not believed to be necessary.

Accordingly, reconsideration and allowance of independent claims 1, 14, and 21 from which dependent claims 2-9, 15-16, and 22-23 variously and ultimately depend are respectfully requested.

**Conclusion**

All rejections having been addressed, Applicant submits that each of pending claims 1-29 in the present application is in immediate condition for allowance. An early indication of the same would be appreciated.

In the event the Examiner believes that an interview would be helpful in resolving any outstanding issues in this case, the Undersigned Attorney is available at the telephone number indicated below.

For any fees that are due, including fees for extensions of time during the pendency of this application, please charge Deposit Account Number 03-3975 from which the Undersigned Attorney is authorized to draw. The Commissioner for Patents is also authorized to credit any over payments to the above-referenced Deposit Account.

Date: June 19, 2008

Respectfully submitted,

**Electronic Signature:**     /Larry J. Hume/    

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Attachments: Correction and Perfection of Claim to Priority  
Verified English translation of priority application FI 982855, filed on 12/31/1998  
Application Data Sheet